THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.5047 of 1995

-

Dated 10-03-2006

Between:

K.V.Subba Rao & others.

..... PETITIONER

AND

The Regional Joint Director, Secondary Education, Guntur & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.5047 of 1995

O R D E R:

Seeking a direction to respondents 1 and 2 not to approve the selection of respondents 5 and 6 to the posts of Secondary Grade Teacher and B.Ed (Science) Assistant in P.S.N.C.C. High School, Muppavaram, Prakasam District and to declare the selection of respondents 5 and 6 to the posts of the Secondary Grade Teacher and B.Ed. (Science) Assistant in P.S.N.C.C. High School, Muppavaram, as illegal and arbitrary, the present writ petition is filed.

Petitioners are members of the managing committee of the P.S.N.C.C. High School, a private aided institution, at Muppavaram. It is alleged that respondents 3 and 4,

who are also members of the managing committee, had been mismanaging the affairs of the school and had not been conducting meetings properly and for the past several decades no audit was conducted with regards the financial affairs of the school. Petitioners would submit that despite their being in the majority and inspite of several representations to the authorities, no action was taken against respondents 3 and 4. According to the petitioners, before filling up the vacancies in teaching and non-teaching posts, the 3rd and 4th respondents were required to obtain permission of the managing committee. It is alleged that one post of Secondary Grade Teacher had been vacant ever since 1991 and another post of B.Ed. (Science) Assistant was vacant since 1992. In the month of August, 1994, the 3rd respondent issued a paper advertisement inviting applications for the Secondary Grade teachers post and also for the B.Ed (science) assistant post. It is alleged that prior to issuance of advertisement, respondents 3 and 4 did not conduct any meeting nor was permission of the managing committee obtained. The advertisement stated that interviews were to take place on

05-08-1994. It is alleged that even before advertisement was given, the 3rd respondent and his supporters had decided to appoint the 5th respondent to the Secondary Grade teachers post, and the 6th respondent, being related to the 3rd respondent, in the vacant B.Ed (science) assistant post. It is alleged that the 5th respondent was to be appointed in the Secondary Grade teachers post with the understanding that he would be given in marriage to the granddaughter of one Jagarlamudi Subbarayudu, a member of the committee and a follower of the 3rd respondent. Though the marriage was scheduled to take place on 21-08-1994, interviews were postponed apprehending that if selections were over prior to marriage, there was the likelihood of the candidate refusing to marry the granddaughter of Sri Jagarlamudi Subbarayudu. Another advertisement is said to have published in the newspapers on

25-12-1994 inviting applications for these two posts and that the date of interview was fixed as 10-02-1995. It is contended that for being appointed to the B.Ed (science) assistant post, a candidate must be trained in C.B.Z. methodology in B.Ed., that purposefully, the 3rd respondent did not mention the qualifications required for the post in the advertisement, with a view to accommodate the 5th respondent, who was not qualified since he had been trained only in Maths and

English and not qualified for the science teacher's post, that the 3rd respondent was politically influential and had got his own men in the committee with a view to select his own persons, that the Head Masters of Thimmasamudram and Pusapadu High Schools were included as members of the committee despite the fact that these schools were located far away from Muppavaram only because they are close associates of the 3rd respondent, and that the members of the Selection Committee colluded with the 3rd respondent and selected respondents 5 and 6 to these vacancies. Petitioners are said to have approached the authorities asking them not to approve these appointments, to conduct an enquiry with regards the manner of their selection and are also said to have issued a legal notice. Petitioners would contend that they are not interested in any person being appointed and are only keen to ensure the welfare of the students. Petitioners would contend that the 6th respondent is not qualified to be appointed in the B.Ed. (science) teacher's post, there is no necessity for any new maths teacher, and that appointment of an unqualified person would adversely affect the careers of students and would affect the reputation of the school. Petitioners would allege that call letters were not sent to several applicants, that even to the few applicants to whom call letters were sent, they were sent just a day prior to the date of interview. Petitioners would allege that some of the applicants had received the call letters after the interview was over. According to the petitioners, the entire selection is vitiated by the fraud of the 3rd respondent.

The second respondent, in his counter affidavit, would submit that the P.S.N.C.C. High School, Muppavaram, is a private aided institution run by a committee, of which, the 3rd respondent is the Secretary and Correspondent. It is stated that the accounts of the school for the year 1990-91 and 1992-93 were audited during the year 1993 and that the audit report does not make any allegations of financial irregularities against respondents 3 and 4. The allegation that no audit was conducted is denied. The second respondent would deny the allegation that one SGST post was vacant from 1991 and B.Ed. post from 1993 and would state that the Correspondent had sought permission to fill up these vacancies during 1994 and that necessary permission was accorded, vide proceedings dated 16-02-1994, to fill up the vacancies duly following the procedure laid down in G.O.Ms.No.1, dated 01-01-1994. It is stated that the 3rd respondent had issued a paper advertisement inviting applications and that he had also notified the said vacancies to the

Employment Exchange, Ongole to sponsor candidates for the said posts. It is stated that at the request of the 3rd respondent, the Deputy Educational Officer, Parchur was nominated as the departmental representative for the Staff Selection Committee, that since the Deputy Educational Officer was busy with the teachers recruitment test, 1994, interviews could not be conducted on 05-08-1994. It is stated that the Staff Selection Committee had conducted written and oral test on 10-02-1995 to candidates who had applied for the posts as per the paper advertisement as well as to those whose names had been sponsored by the Employment Exchange. It is admitted that the 6th respondent was selected as B.Ed Assistant as he possessed the qualifications of B.Sc., B.Ed., with Maths, Physics and Chemistry as subjects in B.Sc. and Maths and English as a method of teaching in B.Ed. It is stated that there is no bar for Maths graduates from teaching science, that the 6th respondent was eligible for appointment to the post of Science B.Ed. Assistant and was consequently appointed by the Selection Committee. It is stated that a reply was sent to the legal notice on 30-03-1999, that the records would disclose that the 3rd respondent had posted call letters under certificate of posting, to all the candidates who had applied in response to the advertisement as well as to those who were sponsored by the Employment Exchange.

A counter affidavit is filed on behalf of the 3rd and 4th respondents, wherein it is stated that the school is run by a society registered under the Societies Registration Act, which has the power of superintendence over the working of the school. While admitting that petitioners 1 to 7 are members of the society, it is stated that the 8th petitioner is not a member. Details of the background and the manner in which the school was established, as stated therein, need not referred to since they are not relevant. Respondents 3 and 4 would submit that audit was conducted every year regularly by the education department over the financial affairs of the school, that prior to filling up of vacancies of either teaching or non-teaching staff, permission of the managing committee was required. While denying the allegation that there was an understanding that the 5th respondent would be given in marriage to the granddaughter of Jagarlamudi Subbarayudu, it is stated that the 6th respondent is not related to the 3rd respondent, and on the other hand, is closely related to the 4th petitioner. It is stated that prior permission of the managing committee is not required for filling up vacancies either under the A.P.Education Act or the Rules made

thereunder or the Bye-laws of the society. Respondents would state that they have taken necessary permission for filling up the posts of School Assistant and Secondary Grade Teacher from the D.E.O., and had got issued an advertisement in the month of July, 1994 and had invited applications. It is stated that the Selection Committee consists of the nominee of the D.E.O., Head Master of the School, two other subject experts nominated by D.E.O., Correspondent and the President of the School, that the interviews scheduled to be held on 06-08-1994 were postponed to 24-08-1994 as the nominee of the D.E.O. could not be present and was again postponed due to the inconvenience of the officials. It is denied that the interviews were postponed for the reasons alleged by the petitioners. Respondents would submit that the interview date was fixed as
10-02-1995 as per the directions of the D.E.O. It is stated that the present Head Master of the School had passed B.Sc. and B.Ed. with Natural Science and therefore, the Head Master could teach classes relating to natural science and since the 6th respondent had passed B.Sc. with M.P.C. Group and B.Ed. with Maths and English, he was eligible to teach Physical Science as School Assistant and that the Selection Committee had duly selected the 6th respondent for the post of School Assistant after satisfying themselves about his eligibility. Allegations of collusion are denied and it is stated that there is no procedural irregularity in appointing respondents 5 and 6. Allegations that call letters were not sent to several candidates and that one day prior to the date of interview, call letters were sent is denied. It is stated that call letters were sent to all applicants in time and that no complaints were received from them in this regard.

In the counter affidavit, filed on behalf of respondents 5 and 6, it is stated that the 3rd respondent had taken necessary permission from the competent authority for filling up the posts of School Assistant and Secondary Grade Teacher as is evident from the proceedings dated 26-04-1994, 23-08-1994 and 13-12-1994 issued by the D.E.O. It is stated that the advertisement was issued in July, 1994 and not in August, 1994 as alleged. The allegation that the Correspondent decided to appoint the 5th respondent even before the advertisement was issued is denied as false and without any basis. The allegations that the 5th respondent is related to the 3rd respondent and that there was an understanding to give the 5th respondent in

marriage to the granddaughter of Sri Jagarlamudi Subbarayudu is denied. It is stated that the maternal uncle of the 5th respondent and Sri Jagarlamudi Subbarayudu had been jointly cultivating agricultural lands, that both are close knit families, that the performance of marriage had absolutely nothing to do with the appointment of the 5th respondent. Reasons for the interview being postponed are detailed in the counter affidavit. The sixth respondent would state that he is eligible to teach physical science as school assistant, that classes relating to natural science are being taken by the head master and that the science assistant was recruited to take classes in physical science only. Allegations of collusion and fraud are denied.

In reply, petitioners would submit that respondents 5 and 6 are not qualified as they have not studied B.Ed. in regular college and had only passed correspondence course from Annamalai University and for B.Ed. (Science) post, a candidate must pass C.B.Z. methods in B.Ed. and since the 6th respondent had passed B.Ed. in Maths and English, he was not eligible. It is also stated that under the procedure prescribed, school authorities are required to request the Employment Exchange to sponsor names and accordingly the employment exchange had sponsored names of certain persons and not that of respondents 5 and 6. It is stated that only to enable respondents 5 and 6 to attend the interview, the Correspondent had issued the advertisement in newspapers on
25-12-1994. It is stated that on 10-02-1994, when candidates sponsored by the employment exchange came to attend the interview, the correspondent informed them that respondents 5 and 6 had already been selected. It is stated that though interviews were not conducted, proceedings were prepared between 10 P.M. and 11 P.M. as if interviews had been conducted, respondents 5 and 6 were selected and on the next day, signatures of the members of the Selection Committee were obtained as if they had conducted the interviews. It is stated that no written or oral tests were conducted and the records were manipulated and prepared as if such a test had in fact been conducted. It is stated that proposals were sent to the Regional Joint Director for approval despite the fact that the entire selection process was illegal and irregular and when candidates sponsored by the Employment Exchange, with prescribed qualifications, were available, it was beyond comprehension as to how the Selection Committee could have selected respondents 5 and 6, who were not qualified and whose names had not even been sponsored by the Employment Exchange. It is stated that since the vacancy is for Natural Science, filling up the

vacancy with the 6th respondent is illegal. It is stated that post graduate candidates were also sponsored by the employment exchange but they were not selected. With regards the contention that the Head Master possessed B.Ed. and could teach classes relating to Natural Science, it is stated that there was no necessity, in such an event, to fill up the post of natural science teacher.

Sri T. Rajendra Prasad, learned counsel for the petitioners, would submit that since the statutory rules require candidates to be sponsored by Employment Exchange, and since admittedly, respondents 5 and 6 had not been sponsored by the Employment Exchange, they could not have been considered for appointment to the posts of Secondary Grade Teacher and B.Ed. School Assistant in the P.S.N.C.C. High school, more so, when post graduates were available for selection, their names having been sponsored by the Employment Exchange. Learned counsel would allege fraud contending that the appointment of respondents 5 and 6 were for extraneous reasons and not on the basis of merit. Learned counsel would submit that appointing a person, who did not even possess the requisite qualifications to teach Natural Science, would only result in a decline in the standards of the school and the petitioners, as members of the managing committee of the school, were interested in ensuring that the high standards which the school had achieved, over the past several decades, was continued to be maintained. Learned counsel would submit that the authorities could not turn a blind eye to the several irregularities committed by the 3rd and 4th respondents and mechanically grant approval for such appointments. Learned counsel would request this Court to direct the respondents to produce the records and to peruse the same to satisfy itself as to whether the procedure for selection was in order or not. Learned counsel would submit that appointments made contrary to statutory rules was void *ab initio* and this Court should issue a declaration that it was void.

Learned Government Pleader for School Education would submit that prior approval of the department was sought for filling up the vacancies, a Selection Committee was duly constituted in accordance with the rules and pursuant to the decision of the Selection Committee, respondents 5 and 6 were selected as Secondary Grade Teacher and B.Ed. school assistant respectively. Learned Government Pleader would submit that there is no prohibition, under the rules, for appointment of candidates possessing B.Sc. with M.P.C. group and with Maths and English as B.Ed. subjects and since the principal of the school was taking Natural Science

classes, appointment of the 6th respondent as B.Ed. Assistant did not cause inconvenience to students of the school.

Sri G.Pedda Babu, learned counsel appearing for the 3rd respondent, would submit that the A.P. Educational Institutions "Establishment, Recognition, Administration and Control of Schools" Rules, 1988, notified in G.O.Ms.No.524, dated 20-12-1988, apply to all categories of schools functioning under the Government, Local Bodies and Private Managements imparting education in pre-primary schools, primary schools, upper-primary schools and secondary schools. Learned counsel would submit that Rule 15 thereof prescribed the procedure for appointment of staff and disciplinary control and sub-rule (2) provided that candidates sponsored by the concerned Employment Exchange alone shall be entertained for interview for selection by the Staff Selection Committee and in case, the Employment Exchange is unable to sponsor suitable candidates for appointment, the educational agency may make advertisements in the local daily news papers having wide circulation calling for applications from the candidates possessing requisite qualifications for appointment to various posts after subjecting them to interview and selection by the Staff Section Committee. Learned counsel would submit that the rules notified in G.O.Ms.No.524, dated 20-12-1988, were superseded by the rules notified in G.O.Ms.No.1, dated 01-01-1994, and under rule 12(3) thereof, appointment of staff was required to be made by advertisement in two newspapers having large circulation, one of which was to be in telugu and under sub-rule (4) thereof, all Educational Institutions receiving grant-in-aid from Government were required to notify vacancies to the Employment Exchange and in addition to the advertisement in the newspapers, they were required to call the candidates sponsored by the Employment Exchange for test and interview provided that persons, who apply to the posts in response to the advertisement in the newspapers, should have registered their names in any Employment Exchange in the State. Learned counsel would submit that while the earlier rules in G.O.Ms.No.524, dated 20-12-1988 required candidates sponsored by the Employment Exchange to be given first preference, the amended rules in G.O.Ms.No.1, dated 01-01-1994 merely require candidates who had registered themselves with the Employment Exchange to be considered for selection. Learned counsel would submit that in view of the subsequent amendment to the rules, the earlier prescription of the names being sponsored by the Employment Exchange having been given a go-bye, the

contention, that the names of respondents 5 and 6, not having been sponsored by the Employment Exchange, they could not have been appointed as Secondary Grade Teacher and B.Ed. Assistant, must therefore be rejected. Learned counsel would further submit that even under G.O.Ms.No.40, dated 07-02-1992, which were applicable to Government and Panchayat Raj Institutions, the posts of School Assistant in class 'C' were required to be filled up by way of direct recruitment or by promotion or by appointment or by transfer and the qualifications prescribed for appointment to the said post was that the candidate must possess a Bachelor's degree in any subject and a B.Ed. degree from a University in India. Learned counsel would submit that since the 6th respondent was a science graduate and possessed B.Ed. degree from an University in India, he had satisfied the qualifications prescribed for appointment to the post of School Assistant, even under G.O.Ms.No.40, dated 07-02-1992 though the rules notified in the said the said G.O. did not automatically apply to private institutions. Learned counsel would submit that it is only much later, in the rules notified in G.O.Ms.No.538, dated 20-11-1998, were the posts of School Assistants categorized as School Assistant (Maths) and School Assistant (Science). While the qualification prescribed for appointment of School Assistant (Maths), was that the candidate must have Maths as a methodology subject in B.Ed. and as one of the three optional subjects in B.Sc., for appointment to the post of School Assistant (Science), the candidate must be a graduate in C.B.Z. and B.Ed. with Natural Science or Physical Science as one of the methodology subjects. Learned counsel would submit that, in any event, even the rules notified in G.O.Ms.No.538, dated 20-11-1998 did not apply to private aided schools and were applicable only to teachers working in Government and Panchayat Raj Institutions. According to the learned counsel, in any event, since the entire selection process had been completed prior to the date on which the rules notified in G.O.Ms.No.538, dated 20-11-1998 came into force, categorization of School Assistants as School Assistant (Maths) and School Assistant (Science) and prescription of qualifications for those posts, would not apply in case of appointment to the posts of Secondary Grade Teachers and School Assistants to which respondents 5 and 6 were appointed.

As noticed above, while the rules notified in G.O.Ms.No.524, dated 20-12-1988 required private aided institutions to select candidates from among those

whose names had been sponsored by the Employment Exchange, the subsequent amendment to the rules in G.O.Ms.No.1, dated 01-01-1994, merely require candidates, who had registered themselves with the Employment Exchange, to be considered for appointment. As such the contention, that since the names of respondents 5 and 6 had not been sponsored by the Employment Exchange their appointments were illegal must necessarily be rejected. While the contention of Sri T.Rajendra Prasad, learned counsel for the petitioners, that appointment of a maths graduate as a Science Teacher would cause inconvenience to students and that such appointments may lead to depletion in the high standards of teaching required to be maintained in schools, cannot be said to be without merit, this Court would, normally, exercise its jurisdiction under Article 226 of the Constitution of India, only if in the process of such appointments any statutory rules or provisions have been violated. While private aided schools are required to maintain high standards, the fact remains that at the relevant time in 1994, when respondents 5 and 6 were selected as a Second Grade Teacher and a B.Ed. School Assistant respectively, the rules did not classify school assistants as School Assistant (Maths) and School Assistant (Science) nor did the rules prescribe that candidate with graduation in C.B.Z alone could be appointed as a science teacher. Even otherwise, respondents 5 and 6, having been appointed, by a duly constituted Selection Committee, constituted in accordance with the rules in G.O.Ms.No.1, dated 01-01-1994 more than a decade earlier and having been continued in service ever since, it would be inappropriate for this Court to interfere in such selections after a lapse of more than one decade, more so, as it is well settled that this Court, under Article 226 of the Constitution of India, would not sit in appeal over decisions of duly constituted selection committees.

The writ petition is accordingly dismissed. However in the circumstances without costs.

_____

10-03-2006

usd